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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,109	03/30/2004	Michael W. Salter	2560.004	5534
21917	7590	05/01/2006		
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			EXAMINER STANDLEY, STEVEN H	
			ART UNIT 1649	PAPER NUMBER

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,109	Applicant(s) SALTER ET AL.	
	Examiner Steven H. Standley	Art Unit 1649	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-49 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, 11, 13-18, 22-25, 37-39, and 44-46, drawn to a method for modifying NMDA interactions with SRC, classified in class 435, subclass 7.2.
 - II. Claims 6-10, 12, 26-29, 31-35, 40-43, and 47-49, drawn to a pharmaceutical composition comprising a peptide with that inhibits NMDA-SRC interaction, classified in class 514; subclass 2.
 - III. Claims 19-21, drawn to a peptide that anchors SRC to the NMDA receptor, classified in class 514, subclass 2.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the method entails providing a composition and administering the composition. The method can be performed with any other polypeptide composition such as hGH or insulin, or IGF.

Although there are no provisions under the section for "Relationship of Inventions" in the M.P.E.P. § 806.05 for inventive groups that are directed to different

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products, restriction is deemed to be proper because these methods appear to constitute distinct inventions for the following reasons: Groups II and III are directed to products that are distinct both physically and functionally, and are not required and are not required one for the other.

Invention group II is a polypeptide product which is the fragment of SRC which binds to NMDA receptors such that administration of the fragment interferes with binding of SRC to NMDA receptors. The invention of group III is a polypeptide product that binds SRC and NMDA such that it anchors SRC to the NMDA receptor. The polypeptides have distinct, unrelated sequences with different functions. Therefore a search and examination of the methods of group II and group III would constitute an undue burden, since the searches are entirely different and not coextensive, and the subject matter divergent.

Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are a method of modulating NMDA receptor binding with SRC and a polypeptide is not as useful in that method. Therefore, a search and examination of the methods of group I and the product of group III would constitute a serious search burden because they are unrelated and not coextensive.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Standley whose telephone number is **(571) 272-3432**. The examiner can normally be reached on Monday through Friday, 8:00 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on **(571) 272-0867**.

The fax number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

Steve Standley, Ph.D.

4/18/06



LORRAINE SPECTOR
PRIMARY EXAMINER